

NO. 5:13-CV-00084-BO

Defendant.

ORDER

BACKGROUND

On November 6, 2013, counsel for GC and plaintiff conducted a telephone conference to discuss GC's concerns and objections to the 30(b)(6) notice, the Rule 34 request, and the subpoenas, pursuant to FED. R. CIV. P. 37 and Local Civil Rule 7.1(c). Upon completion of the

telephone conference, counsel for GC sent plaintiff via email and U.S. Mail the letter attached to the motion to quash as exhibit I, reiterating the deficiencies with, and GC's objections to the 30(b)(6) notice, the Rule 34 request, and the subpoenas.

On November 6, 2013, plaintiff served upon counsel for GC the second Garzes subpoena, the second Grover subpoena, and the second Jackson subpoena. These subpoenas purport to be issued by the Eastern District of Texas, but defendant alleges that they were signed by Marion Hartman, and employee of the Eastern District of North Carolina. On November 15, 2013, this Court quashed the subpoenas sua sponte, excused defendant from responding to a Rule 34 request, excused defendant from responding to the document request associated with a Rule 30(b)(6), and extended the discovery deadline.

DISCUSSION

I. MOOTNESS.

This Court excused defendant from responding to the Rule 34 request to which plaintiff seeks to compel an answer because that request was improperly filed. Accordingly, plaintiff's motion to compel is denied as moot as it applies to the rule 34 request. The court also quashed the subpoenas to which plaintiff seeks to compel compliance. Accordingly, plaintiff's motion to compel is denied as moot as it applies to the subpoenas.

II. 30(b)(6) DEPOSITION.

FED. R. CIV. P. 37(a)(3)(B) provides that "[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if: (i) a deponent fails to answer a question asked under Rule 30 or 31; (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4); (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to respond that inspection will be

permitted or fails to permit inspection – as requested under Rule 34.” As the motion to compel was filed before the Rule 30(b)(6) deposition took place, none of the requisite events have occurred to justify a motion to compel for failure to comply with a Rule 30(b)(6) deposition. As such it is premature and unfounded.

III. EXPENSES AND COSTS.

Defendant requests that it should be awarded its expenses and costs pursuant to FED. R. CIV. P. 37(a)(5)(B) because plaintiff’s motion is improper and unfounded. However, “the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust. The Court finds that plaintiff’s pro se status, and defendant’s general uncooperativeness with plaintiff’s discovery requests would make an award of expenses and costs unjust.

CONCLUSION

For the foregoing reasons, plaintiff’s motion to compel is DENIED. No expenses and costs are awarded.

SO ORDERED.

This the 20 day of November, 2013.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE